

No. 12,094

IN THE

United States Court of Appeals
For the Ninth Circuit

PAUL FIX,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLEE.

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PAUL FIX,

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BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

This is one of seven denaturalization cases involving members of the German-American Bund which were actually tried in the United States District Court for the Northern District of California and in which the Government obtained judgment against all of the defendants.

The cases were consolidated (*United States v. Bruno Holtz, et al.*, 43 F. Supp. 63) for the trial of the common issues of law and fact as to the un-American and subversive character of the German-American Bund and predecessor organizations, of which all of the defendants were members, reserving to the individual defendants separate trials as to their

separate and individual statements, acts, conduct and membership in, knowledge of the principles and purposes of the German-American Bund and its predecessor organizations, and their personal participation in the activities of said organization, together with their personal endorsement of such principles, aims and activities.

**FINDINGS AND CONCLUSIONS AS TO THE
COMMON ISSUE.**

After hearing lengthy testimony with respect to the principles, purposes and activities of the German-American Bund and its predecessor organizations, the Court below prepared findings of fact and conclusions of law as to the common issue, which are set forth herein in full in the appendix.

The conclusions of law of the Court below were succinct and to the point and are well worthy of repetition. They are as follows:

- “(1) In carrying out the activities hereinabove described, and in seeking to accomplish its real aims and purposes, the Bund demonstrated itself to be a German militant ‘Fifth Column’ organization in the United States, antagonistic to the democratic form of government and to the Constitution and laws of the United States un-American and subversive. One who believes in the Nationalist Socialist philosophy and form of government cannot at the same time be loyal to the United States nor attached to the principles of the Constitution and laws of the United States.
- (2) The principles of German National Social-

ism are opposed in all respects to the principles of democracy and to the Constitution and laws of the United States.”

APPELLANT'S INDIVIDUAL TRIAL.

The appellant Paul Fix was born at Haslach, Germany, on January 26, 1905. He worked as a farmer in Germany and had an education equivalent to graduation from high school and subsequent trade school. He entered the United States in December, 1928. (R. 77.)

He began learning the baker's trade in San Francisco in 1929, and except for a period in 1930, when he made four or five coastwise trips as a seaman, and another period in 1939, when he operated a restaurant and saloon for four or five months, he has followed the occupation of baker since that time. (R. 78-79-80.)

He was first married in San Francisco in 1930 to Mary Winkler, who died in 1932. His only child, a son, an issue of this marriage, was given away for adoption at the age of four months. (R. 80-81-82-83.)

His second marriage was to Meta Schlegel which marriage was terminated by divorce some six years later. (R. 83-84.) His third and present marriage to Thelma Fix, occurred in 1942. (Tr. 83-84.)

Appellant filed his declaration of intention to become a citizen of the United States on June 29, 1929 and was naturalized on January 6, 1936. (R. 75.)

Appellant made a trip to Germany, departing from the United States about March 1, 1937 and returning in late August or early September of the same year. (R. 84-85.) The trip to Germany was, according to appellant, for the purpose of visiting his folks and to see the folks of his third wife, who accompanied him on the trip. (R. 85.)

Appellant began his bakery at LaFayette, California, where he has since been located, in October, 1941. (R. 45.)

When questioned concerning his first association with the Friends of New Germany and the German-American Bund, the appellant was apparently evasive in his answers, causing the Court to ask him certain direct questions and to direct him to answer the questions. (R. 88, 98.) Appellant testified that he was first associated with the Friends of New Germany in 1934, (R. 91) *this being about two years prior to the date of his naturalization*. However, according to his testimony, appellant did not recall seeing flags, banners, swastikas or uniforms at that time (R. 91). He stated that he had only attended one meeting of the Friends of New Germany. (R. 90.) Appellant could not recall whether his first association with the German-American Bund was before or after his trip to Germany. (R. 85.) However, he did state that he thought it was late in 1936 when he went to one or two meetings. (R. 85.)

Appellant formally joined the German-American Bund in 1938 or 1939 and paid dues for a period of three months. (R. 86-87, 93.)

Appellant testified that he might have seen some of the propaganda moving pictures at Bund meetings in 1936 and that he definitely saw others after his return from Germany in 1937. (R. 92.) Appellant had a membership card issued to him in the German-American Bund. (R. 93.) He knew Gottfried Hein, but not personally, and Henry Lage, but did not remember Heilman nor Otto Wiedemann nor Julius Schmidt. (R. 94.) Appellant testified that at the meeting halls of the German-American Bund, he saw a phonograph and the American flag. On occasions he saw the swastika flag. He also saw a table on which were placed German newspapers, but could not recall their names. (R. 95.)

Appellant testified that he never wore the O. D. (Ordnungs Dienst) uniform, but had seen members of the German-American Bund in uniform. (R. 97-98.) He testified that when he joined the German-American Bund, he knew there was a uniformed group, but did not recall the arm bands and swastikas. (R. 99.) He knew of the "leadership principle" of the Bund, but could not recall any specific time at which it had been discussed. (R. 100.) *He said he left the Bund because of personal differences with Gottfried Hein. (R. 100-101.)* He does not claim that he quit the Bund because he did not agree with their principles, practices and theories.

Appellant stated that he joined the German-American Bund because of business reasons, i. e., they purchased bakery goods from him for use as refreshments following meetings. (R. 101.)

When questioned as to whether he knew the principles of the German-American Bund at the time he joined, appellant answer was "yes and no." (R. 102.) Appellant testified that he could not recall as to whether he knew the requirements for membership in the German-American Bund (R. 102); testified that he did not recall hearing of the blood theory nor anything specific about Adolf Hitler or National Socialism. (R. 106-107.) He testified that he could not remember having seen the Nazi salute and that he never gave the Nazi salute himself (R. 107) (as testified to by witness Jessen in the consolidated case, R. 391).

Appellant was in attendance at the Dublin Canyon picnic in 1938, at which time a large swastika was burned on the hillside. He also attended the Gautag West convention in Los Angeles in 1939, having driven in his car and taken other Bund members to attend this convention of Bund organizations on the west coast. (R. 115.)

At first he did not recall having signed a telegram to Senator Johnson from this convention. (R. 116-117.) This telegram was later introduced in evidence as Government's Exhibit 3. (R. 133.) After some discussion he admitted that he had signed a transcript of a statement made to an officer of the Federal Bureau of Investigation, which statement was introduced as U. S. Exhibit 2. (R. 117-8-9-20.) The statement in full reads as follows:

“LaFayette, California
February 9, 1943.

“I, Paul Fix, voluntarily make this statement to Charles F. Bruschi and Edward W. Butler, Jr., Special Agents, Federal Bureau of Investigation. No threats or promises have been made to me and I know this statement may be used in court.

I was born January 26, 1905, in Germany, entered the United States in 1928 and was naturalized at San Francisco in 1936.

From 1934 to 1937, when I took a trip to Germany, I attended one or two affairs of the Friends of New Germany and may have made a donation to the organization.

From the time I returned from Germany in the later part of 1937 until the later part of 1939 I attended affairs of the German-American Bund at least on the average of twice a month. At these affairs I heard numerous lectures on the merits of National Socialism. I recall seeing the German swastika flag displayed, the outstretched arm salute given, and the Horst Wessel Lied sung. I have read many times the German-American Bund newspaper, the Deutsches Weckruf und Beobachter, and the Free American, which was distributed at meetings. I recall seeing the Oudnungs Dienst in uniform. I recall seeing Herman Schwinn and Fritz Kuhn, national leaders, at meetings in San Francisco and Los Angeles. I attended the Sonnenwendefeier at Dublin Canyon June, 1938, when the swastika in the hillside was burned.

In September, 1939, at the request of Herbert Landes and Hartwig Reese, I drove my car to

Los Angeles and took several San Francisco Bund members to the Gautag West (Western District Convention). I recall that George Ordemann also drove his car on this occasion. I recall the following Bund members attending the convention with me: Gottfried Karl Hein, George Ordemann, Erwin Mast, Hartwig Reese, Alfred Boehme and Herbert Landes.

At the convention a group telegram was sent to Senators and Congressmen in Washington, urging that the United States remain neutral in the European conflict. I may have subscribed to this telegram and received a reply back from Senator Hiram W. Johnson, addressed to me personally.

According to my best recollection the persons who rode with me to Los Angeles paid me for transportation out of their own funds.

I have read this two-page statement and have signed it after initialing the first page.

Paul Fix.

Witnesses: Charles F. Bruschi,
Special Agent, FBI.
Edward W. Butler, Jr.,
Special Agent FBI."

(R. 122-3-4.)

The appellant stated that while operating the Elite Cafe in 1938 and 1939, he instructed a group of Bund members, who were in his restaurant, not to discuss political matters in the restaurant. Appellant knew these persons were members of the Bund although the Bund was supposed not to have existed at that time. (R. 127-8-9-30.)

Government witness William C. McClure testified that he had worked for Fix as a baker in LaFayette from February, 1942 to August, 1942. (R. 144.) While working for appellant, this witness heard appellate state that President Roosevelt and his cabinet were warmongers. When soldiers passed appellant stated: "There goes the condemned row, they are going off to slaughter." (R. 145.) Mr. Fix stated to witness that he did not want any war bonds; that they would be no good after the war. (R. 146.) Appellant told witness that Germany would win the war; that the gold at Fort Knox would be melted into German marks and that American money would have no value. (R. 146.) Appellant told witness that he would not give the s. o. b's anything for salvage or scrap. (R. 147.) He said that he would rather sit in the guard-house than go into the United States Army. (R. 148.) The witness testified that appellant described Jews generally as "sons of bitches and bastards," (R. 150) and that the United States should have the German national system rather than our own form of government. (R. 152.)

Government witness Mrs. Rose Levick testified that Paul Fix roomed at her home from April to July, 1940. After defendant left she discovered among his effects a German army rifle, a German gas gun and a loaded .22 rifle. (R. 174.) Among the phonograph records in appellant's possession was one in which the chorus was all "Heil Hitler." While residing in her home appellant received mail from Bund headquarters telling of meetings, but told witness that he did

not belong. (R. 174.) Appellant told witness that Germany was going to take over the United States and was prepared to do so. He further stated that German people here were armed and ready at a given signal to dispose of the Jews and that General Mosley was to be headman in a government here which would be the same as that in Germany. (R. 175.) Mr. Fix told her that the gas gun was a secret of the Germans. (R. 179.)

Government witness Ada Levick, daughter of the preceding witness, testified that Fix told her that all Americans unions should be broken as they have been in Germany; that the Germans would take over America; that they were armed and prepared here; that General Mosley would be the leader and that the Jewish people would be wiped out. (R. 181.) She also saw the guns described by the previous witness, Mrs. Rose Levick, and testified that the .22 rifle was loaded. (R. 182.)

Government witness James Richard Montgomery, who first became acquainted with appellant Fix at LaFayette after 1941, testified that Fix told him: "If Roosevelt had kept his big mouth shut, the United States would not be in the war," (R. 185.)

Government witness Emmet R. Howard testified that on the return of appellant Fix from Germany in 1937 or 1938, appellant stated: "We may need a Hitler here to change our conditions." (R. 200.)

THE ISSUE.

The basic issue raised by the appellant is the contention that the evidence in the case does not support the findings of the Court.

In that connection due consideration must be given the opinions in the Supreme Court in the cases of *Schneiderman v. United States*, 320 U.S. 118, 63 S.Ct. 1333; 87 L.Ed. 1796, rehearing denied 64 S.Ct. 24, 320 U.S. 807, 88 L.Ed. 488; *Baumgartner v. United States*, 322 U.S. 665, 64 S.Ct. 1240, 88 L.Ed. 1525; *Knauer v. United States*, 328 U.S. 654, 66 S.Ct. 1304, 90 L.Ed. 1195;

and the recent case of

Kuehn v. United States, 54 F.Supp. 63, 162 F. (2d) 716; cert. denied 332 U.S. 837.

It will be noted that the Supreme Court distinguished the case of *Knauer v. United States*, supra, from the cases of *Schneiderman v. United States*, supra, and *Baumgartner v. United States*, supra. It will be further noted that the decision in the case of *Kuehn v. United States*, supra, in the Ninth Circuit, follows the decision in *Knauer v. United States*.

It is the contention of the Government that there is ample evidence to sustain the findings of the District Court. The Court made certain findings as to the aims, purposes and doctrines of the German-American Bund and its predecessor organizations. These are fully set forth in the appendix to this brief.

In its Conclusions of Law based on the Findings of Fact, the Court found that in carrying out the

activities set forth in its Findings of Fact (see appendix) and in seeking to accomplish its real aims and purposes, the Bund demonstrated itself to be a German militant "Fifth Column" organization in the United States, antagonistic to the democratic form of government and to the Constitution and laws of the United States, un-American and subversive. The Court held that one who believed in the National Socialist philosophy and form of government, cannot at the same time be loyal to the United States nor attached to the principles of the Constitution and laws of the United States. In addition thereto, the Court made certain specific findings of fact as to appellant's individual case, which findings are set forth in the appendix.

ARGUMENT.

Appellee concedes that in a denaturalization proceeding the burden is on the Government to prove its case by clear, unequivocal and convincing evidence. The appellee contends, however, that under the decision of the United States Supreme Court in the case of

Knauer v. United States, 328 U.S. 654, 66 S.Ct. 1304, 90 L.Ed. 1195,

and the decision of this Court in the case of

Kuehn v. United States (decided July 28, 1947), 162 F.(2d) 716; rehearing denied August 25, 1947; certiorari denied December 8, 1947, 332 U.S. 837,

the appellee has met the test of establishing his case by clear, unequivocal and convincing evidence that said appellant procured the issuance of a certificate of naturalization by fraud.

Let us start with the premise that the granting of citizenship through the process of naturalization is a privilege and not a right. In the case of

Johannessen v. United States, 225 U.S. 227, 32 S.Ct. 613, 56 L.Ed. 1066,

at page 240, the Court quoted from the case of *United States v. Spohrer*, 175 Fed. Rep. 440. The language used by Judge Cross in that case regarding the right of an alien to naturalization, is as follows:

“An alien friend is offered under certain conditions the privilege of citizenship. He may accept the offer and become a citizen upon compliance with the prescribed conditions, but not otherwise. His claim is of favor, not of right. He can only become a citizen upon and after strict compliance with the acts of Congress. An applicant for this high privilege is bound, therefore, to conform to the terms upon which alone the right he seeks can be conferred. It is his province, and he is bound, to see that the jurisdictional facts upon which the grant is predicated actually exist, and if they do not, he takes nothing by his paper grant. Fraud cannot be substituted for facts.”

And again, on page 446,

“That the government, especially when thereunto authorized by Congress, has the right to recall whatever of property has been taken from it by fraud, is, in my judgment, well settled, and if

that be true of property, then by analogy and with greater reason it would seem to be true where it has conferred a privilege in answer to the prayer of an ex parte petitioner.”

The Supreme Court makes a distinction between the measure of proof that is necessary to deny a petition for citizenship under Section 4 of the Act of June 29, 1906 (36 Stat. 598) and the degree of proof necessary to cancel a citizenship for fraud under Section 338 (a) of the Nationality Act of 1940.

In the first class of cases the Court placed on the petitioner for citizenship the burden of proving his eligibility therefor. In the second class of cases, the cancelling of a certificate of citizenship secured by fraud placed the burden on the Government.

Schneiderman v. United States, supra;

Baumgartner v. United States, supra;

Klapprott v. United States (decided January 17, 1949, and reported Supreme Court Law Ed. advance opinion 279).

The courts have uniformly held that an alien fraudulently naturalized, should not be permitted to retain the fruit of his fraud, and will cancel a certificate of naturalization fraudulently obtained.

In *Johannessen v. United States*, supra, the Court said, at page 241:

“An alien has no moral or constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced upon the Court, without which the certificate

of citizenship could not and would not have been issued. As was well said by Chief Justice Parker in *Foster v. Essex Bank*, 16 Mass. 245, 273, 'there is no such thing as a vested right to do wrong.' "

In

Luria v. United States, 231 U.S. 9, 34 S.Ct. 10,
58 L.Ed. 101,

at page 24, the Court quoting from *Johannessen v. United States*, supra, said:

"Several contentions questioning the constitutional validity of Section 15 are advanced, but all, save the one next to be mentioned, are sufficiently answered by observing that the section makes no discrimination between the rights of naturalized and native citizens, and does not in any wise affect or disturb rights acquired through lawful naturalization, but only provides for the orderly cancellation, after full notice and hearing, of certificates of naturalization which have been procured fraudulently or illegally. It does not make any act fraudulent or illegal that was honest and legal when done, imposes no penalties, and at most provides for the annulment, by appropriate judicial proceedings; of merely colorable letters of citizenship, to which their possessors never were lawfully entitled."

U. S. v. Ginsberg, 243 U.S. 472, 37 S.Ct. 422,
61 L.Ed. 853;

Tutun v. United States, 270 U.S. 568, 46 S.Ct.
425, 70 L.Ed. 738;

United States v. Ness, 245 U.S. 319, 8 S.Ct. 118,
62 L.Ed. 321.

Constitutional rights are not endangered by the provision authorizing cancellation of certificate of one taking up a permanent residence in a foreign country within five years after the issuance of a certificate of citizenship.

Luria v. U. S. (N. Y. 1913), 34 S.Ct. 10, 231 U.S. 9, 58 L.Ed. 101, affirming *U. S. v. Luria* (D. C. 1911) 184 Fed. 643;

Section 338 of the Nationality Act of 1940;
Title 1, subchapter III, 54 Stat. 1158, Title 8 U.S.C.A. Sec 738.

This section authorizing the revocation of a certificate of naturalization procured by fraud is constitutional, whether fraud be intrinsic or extrinsic.

U. S. v. Siegel (Conn. 1945), 59 F.Supp. 183, 152 F. (2d) 614; cert. denied, 66 S. Ct. 1361, 328 U.S. 868, 90 L.Ed. 1264.

This same section authorizing the revocation of a certificate of naturalization on the ground that it was illegally procured, does not constitute legislative usurpation of judicial power.

U. S. v. Gallucci (D.C. Mass. 1944), 54 F.Supp. 964.

The provision for the cancellation of certificates of citizenship under the Act of June 29, 1906, applied not only to certificates issued then, but to all certificates heretofore issued by Court exercising jurisdiction in naturalization proceedings.

In its opinion in the case of

Schneiderman v. United States, supra,

the Supreme Court began using the words "clear, unequivocal and convincing" as to the degree of proof required for the cancellation of a certificate of naturalization procured by fraud. It was the first case in that Court wherein it was called upon to decide what evidence was necessary to sustain the cancellation of a certificate of naturalization on the ground that at the time of taking his oath of allegiance to the United States, the naturalized alien had made a mental reservation of an allegiance to another sovereign. The Court endeavored in this case to determine the state of mind of the petitioner for certiorari at the time of his taking the oath of allegiance to citizenship of this country, and decided that in such cases the degree of proof would have to be of a nature which it indicated, "clear, unequivocal and convincing." The Court failed to make definite what it regarded as meeting this degree of proof in particular cases.

This case was followed in that Court by that of

Baumgartner v. United States, supra,

wherein the Court reiterated that the degree of proof necessary for the cancellation of a certificate of naturalization under Section 338(a) of the Nationality Act of 1940 was that such proof must be clear, unequivocal and convincing. In this case the Court was also called upon to pass upon the state of mind of the petitioner for certiorari, Baumgartner, at the time of his naturalization. The Court, in commenting on the state of mind of petitioner at the time he took the oath of allegiance, stated (page 677):

“In short, the weakness of the proof as to Baumgartner’s state of mind at the time he took the oath of allegiance can be removed, if at all, only by a presumption that disqualifying views expressed *after naturalization* were accurate representations of his views when he took the oath. The logical validity of such a presumption is at best dubious even were the supporting evidence less rhetorical and more conclusive. Baumgartner was certainly not shown to have been a party Nazi, and *there is only the statement of one witness that Baumgartner had told him that he was a member of the Bund, to hint even remotely that Baumgartner was associated with any group for the systematic agitation of Nazi views or views hostile to this government.* On the contrary Baumgartner’s diary, on which the Government mainly relies reveals that when in 1939 he attended a meeting of the German Vocational League at which the Nazi salute was given, it was apparently his only experience with this group, and he went ‘Since I wanted to see what sort of an organization this Vocational League was,’ ”

and on page 676, the Court said:

“The insufficiency of the evidence to show that Baumgartner did not renounce his allegiance to Germany in 1932 need not be labored. Whatever German political leanings Baumgartner had in 1932, they were Hitler and Hitlerism, certainly not to Weimar Republic. Hitler did not come to power until after Baumgartner forswore his allegiance to the then German nation.”

Owing to the uncertainty as to what constituted this degree of proof the Supreme Court granted a writ

of certiorari to the Circuit Court of Appeals for the Seventh Circuit in the case of

Knauer v. United States, 328 U.S. 654, 90 L.Ed. 1195.

In this case the District Court had cancelled a certificate of naturalization and revoked the order admitting Knauer to citizenship on the ground that same had been procured by fraud. The Circuit Court of Appeals for the Seventh Circuit affirmed this opinion. (149 F.(2d) 519.) The Supreme Court granted certiorari.

The facts in this case were as follows: Knauer was a native of Germany. He arrived in this country in 1925 at the age of 30. He had served in the German army during World War I and was decorated. He had studied law and economics in Germany. He settled in Milwaukee, Wisconsin, and conducted an insurance business there. He filed his declaration of intention to become a citizen in 1929 and his petition for naturalization in 1936. He took his oath of allegiance and was admitted to citizenship on April 13, 1937. In 1943 the United States instituted proceedings under Section 338(a) of the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U.S.C. Sec. 738(a), to cancel his certificate of naturalization on the ground that (1) he had falsely and fraudulently represented in his petition that he was attached to the principles of the Constitution and (2) that he had taken a false oath of allegiance. The District Court was satisfied that Knauer practiced fraud when he obtained his certificate of naturalization. It found that he had not been and was not attached to the principles of the Con-

stitution and that he took a false oath of allegiance. It accordingly entered an order cancelling his certificate and revoking the order admitting him to citizenship.

The Circuit Court of Appeals affirmed the lower court (149 F.(2d) 519). The case was before the United States Supreme Court on a petition for writ of certiorari which was granted to examine that ruling in the light of the decisions of that Court in

Schneiderman v. United States, 320 U.S. 118,
and

Baumgartner v. United States, 322 U.S. 655.

In the oath of allegiance which Knauer took, he swore that he would "absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the German Reich"; that he would "support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic"; that he would "bear true faith and allegiance to the same" and that he took "this obligation freely without any mental reservation or purpose of evasion." The first and crucial issue in the case was whether Knauer swore falsely and committed a fraud when he promised under oath of forswear allegiance to the German Reich and to transfer his allegiance to this nation.

The Supreme Court examined the facts to determine whether the United States had carried its burden of proving by "clear, unequivocal and convincing" evidence, which does not leave the issue in doubt, that

the citizen who is sought to be restored to the status of an alien obtained his naturalization illegally.

The Court endeavored to discover the state of mind of Knauer *at the time he swore falsely* on April 13, 1937, the date he took the oath of allegiance to the United States. The Court stated that as in the *Baumgartner* case utterances made in years subsequent to the oath, are not readily to be charged against the state of mind existing when the oath was administered. (322 U.S. 675.) Troubled times and the emotions of the hour may elicit expressions of sympathy for old acquaintances and relatives across the waters. "Forswearing past political allegiance without reservation and full assumption of the obligations of American citizenship are not at all inconsistent with cultural feelings imbedded in childhood and youth." (*Baumgartner v. U.S.*, supra, p. 674.)

Human ties are not easily broken. Old social and cultural loyalties may still exist, though basic allegiance is transferred here. The fundamental question is whether the new citizen still takes orders from or owes his allegiance to a foreign chancellory. Far more is required to establish that fact than a showing that social and cultural ties remain. And even political utterances, which might be some evidence of a false oath, if they cluster around the date of naturalization, are more and more unreliable as evidence of the perjurious falsity of the oath the further they are removed from the date of naturalization.

Both the District Court and the Circuit Court of Appeals accepted as the true version of the facts, the following:

As early as 1931, Knauer told a newly arrived immigrant who came from the same town in Germany that, in his opinion, the aim of Hitler and the Nazi party was good, that it would progress, and that it was necessary to have the same party in this country because of the Jews and the Communists. During the same period he told another friend repeatedly that he was opposed to any republican form of government and that Jewish capital was to blame for Germany's downfall. He visited Germany for about six months in 1934 and while there read Hitler's "Mein Kampf." On his return he said, with pride, that he had met Hitler and that he had been offered a post with the German Government at 600 marks per month; that Hitler was the savior of Germany, that Hitler was solving the unemployment problem while this country was suffering from Jewish capitalism; that the Hitler youth organization was an excellent influence on the children of Germany. On occasions in 1936 and 1937, he was explosive in his criticism of those who protested against the practices and policies of Hitler.

The German Winter Relief Fund was an official agency of the German Government for which German consulates solicited money in the United States. In the winter of 1934-1935, Knauer was active in obtaining contributions to the fund and forwarded the money collected to the German consulate in Chicago.

The German-American Bund had a branch in Milwaukee. Its leader was George Froboese, midwestern gauleiter and later national leader. The Bund taught and advocated the Nazi philosophy, the leadership principle, racial superiority of the Germans, the principle of the totalitarian state, Pan-Germanism and of Lebensraum (living space). It looked forward to the day when the Nazi form of government would supplant our form of government. It emphasized that allegiance and devotion to Hitler were superior to any obligation to the United States. Knauer denied that he was a member of the Bund, but the District Court found to the contrary on evidence which was solid and convincing.

Knauer participated in Bund meetings in 1936. In the summer of 1936 he and his family had a tent at the Bund camp. In the fall of 1936 he enrolled his young daughter in the Youth Movement of the Bund, a group organized to instill the Nazi ideology in the minds of children of German blood. They wore uniforms, used the Nazi salute, and were taught songs of allegiance to Hitler. Knauer attended meetings of this group.

The Federation of German-American Societies represented numerous affiliated organizations composed of persons of German descent and sought to coordinate their work. It was the policy of the Bund to infiltrate older German societies. This effort was made as respects the federation. Knauer assisted Froboese and others between 1933 and 1936 in endeavoring to have the swastika displayed at celebrations of

the federation. In 1935, Knauer reprimanded a delegate to the federation for passing out pamphlets opposing the Nazi Government in Germany. At a meeting of the federation in 1935, Knauer moved to have the federation recognize the swastika as the flag of the German Reich. The motion failed to carry. In 1936 the swastika flag was raised at a German day celebration without approval of the federation. A commotion ensued in which Bundists in uniform participated, as a result of which the swastika flag was torn down. At the next meeting of the federation Knauer proposed a vote indicating approval of the showing of the swastika flag. The motion failed and a vote of censure of the chairman was passed. The chairman resigned. Thereupon Froboese and others proposed the formation of the German-American Citizens Alliance to compete with the federation. It was organized early in 1937. The constitution and articles of incorporation of the alliance provided that all of its assets on dissolution were to become the property of a German Government agency for the dissemination of propaganda in foreign countries, the Deutsches Auslands-Institut. The alliance was a front organization for the Bund. It was designed to bring into its ranks persons who were sympathetic with the objectives of the Bund but who did not wish to be known as Bund members.

On February 22, 1937, *less than two months before Knauer took his oath of naturalization*, he was admitted to membership in the alliance and became a member of its executive committee. His first action

as a member was to volunteer the collection of newspaper articles that attacked the alliance, Germany and German-Americans. In 1937, and in the ensuing years Knauer wrote many letters and telegrams to those who criticized the Bund or the German Government. In 1938 Knauer was elected vice-president of the alliance and subsequently presided over most of its meetings. He was the dominant figure in the alliance. In May, 1937, the German consul presented to the alliance the swastika flag which had been torn down at the federation celebration the year before. Not long after his naturalization Knauer urged that the alliance sponsor a solstice ceremony, a solemn rite at which a wooden swastika was burned to symbolize the unity of the German people everywhere. In August, 1937, the alliance refused to participate in an affair sponsored by a group which would not fly the swastika flag. In May, 1938, Knauer at a meeting of the alliance read a leaflet entitled "America, the Garbage Can of the World". In 1939 he arranged for public showings of films distributed by an official German propaganda agency and depicting the glories of Nazism.

There was an intimate cooperation between the alliance and the Bund. The Bund camp was used for alliance affairs and it was available to alliance members. The alliance supported various Bund programs. It supported the Youth Group of the Bund and the Bund's solstice celebration. In 1939 the Youth Group of the Bund held a benefit performance for the alliance. In 1940 it admitted the Youth Group of the Bund at

the request of Froboese. Knauer consistently defended the Bund when it was criticized, when it was denied the use of a park or hall, when its members were arrested or charged with offenses. In spite of the fact that Knauer knew the real aims and purposes of the Bund and was aware of its connection and Froboese's connection with the German Government, he consistently came to its defense. Thus, when a Wisconsin judge freed disturbers of a Bund meeting, he wrote the judge saying that the judge's remarks against the Bund were a "slander of a patriotic American organization." He subscribed to the official Bund newspaper and to a propaganda magazine issued and circulated by an agency of the German Government. He held shares in the holding company of the Bund camp which was started in 1939. A photograph taken at the dedication of the new Bund camp in 1939 shows Knauer among a group of prominent Bund leaders with arm upraised in the Nazi salute. He owned a cottage at the Bund camp. He used the Nazi salute at the beginning and end of his speeches and at the Bund meetings.

In May, 1938, Knauer and Froboese formed the American Protective League with a secret list of members. Knauer was elected a director. A constitution and by-laws were adopted and copies mailed by Knauer and Froboese to Hitler. One Buerk was a German agent operating in this country and later indicted for failing to register as such. In 1939 the German consulate in Chicago supervised the recruiting of skilled workers in that region for return to

Germany for work in German industries. The German consul, Buerk, Froboese and Knauer conducted the recruiting. Knauer participated actively in interviewing candidates. At intervals farewell parties were given by Knauer and Froboese to the returning workers and their families.

Important evidence implicating Knauer in promoting the cause of Hitler in this country was given by a Mrs. Merton. She testified that, prompted solely by patriotic motives, she entered the employ of Froboese in 1938 in order to obtain evidence against the Bund and its membership. The truth of her testimony was vigorously denied by Knauer. But the District Court believed her version as did the Circuit Court of Appeals. The Court felt that her testimony was strongly corroborated and that Knauer's attempt to discredit her testimony did not ring true.

Her testimony may be summarized as follows:

She acted as secretary to Froboese in 1938. During the period of her employment Froboese and Knauer worked closely together on Bund matters. He helped Froboese in the preparation of articles for the Bund newspaper, of speeches, and of Bund correspondence. He helped Froboese prepare resolutions to be offered at the 1938 Bund convention calling for white-gentile-ruled America. When Froboese left the city to attend the convention, he told her to contact Knauer for advice concerning Bund matters. Letters signed by Froboese and Knauer jointly were sent to Hitler and other Nazi officials. One contained a list of 700 German nationals. One was the constitution and by-laws

of the American Protective League which we have already mentioned. One to Hess said they had to lay low for awhile, that there was an investigation on. A birthday greeting to Hitler from Froboese and Knauer closed with the phrase, "In blind obedience we follow you." Knauer told her never to reveal that the alliance and the Bund were linked together. One day she asked Knauer what the Bund was. His reply was that the Bund "was the Fuehrer's grip on American democracy." She reminded Knauer that he was an American citizen. He replied, "That is a good thing to hide behind."

On page 668 of the opinion in the *Knauer* case, the Court made the following statement:

"Moreover, the case against Knauer is not constructed solely from his activities subsequent to April 13, 1937—the date of his naturalization. The evidence prior to his naturalization, that which clusters around that date, and that which follows in the next few years is completely consistent. It conforms to the same pattern. We do not have to guess whether subsequent to naturalization he had a change of heart and threw himself wholeheartedly into a new cause. We have clear, convincing and solid evidence that at all relevant times he was a thoroughgoing Nazi bent on sponsoring Hitler's cause here. And this case, unlike the Baumgartner case, is not complicated by the fact that when the alien took his oath Hitler was not in power. On April 13, 1937, Hitler was in full command. The evidence is most convincing that at that time, as well as later, Knauer's loyalty ran to him, not to this country."

On page 669 of its opinion, the Court distinctly set forth that its view in this case was different than the *Schneiderman* and *Baumgartner* cases. The Court said:

“The district Court properly ruled that membership in the Bund was not in itself sufficient to prove fraud which would warrant revocation of a decree of naturalization. Otherwise, guilt would rest on implication, contrary to the rule of the *Schneiderman* and *Baumgartner* cases. But we have here much more than that. We have a clear course of conduct, of which membership in the Bund was a manifestation, designed to promote the Nazi cause in this country. This is not a case of an underling caught up in the enthusiasm of a movement, driven by ties of blood and old associations to extreme attitudes, and perhaps unaware of the conflict of allegiance implicit in his actions. Knauer is an astute person. He is a leader—the dominating figure in the cause he sponsored, a leading voice in the councils of the Bund, the spokesman in the program for systematic agitation of Nazi views. His activities portray a shrewd, calculating and vigilant promotion of an alien cause. The conclusion seems to us plain that when Knauer forswore allegiance to Hitler and the German Reich he swore falsely.”

Again, on page 670 of the same opinion, the Court stated:

“We need not consider the extent to which a decree of naturalization may constitute a final determination of issues of fact, the establishment of which Congress has made conditions precedent to naturalization. Those facts relate to the past—

to behavior and conduct. But the oath is in a different category. It relates to a state of mind and is a promise of future conduct. It is the final act by which an alien acquires the status of citizen. It requires forswearing of allegiance in good faith and with no mental reservations. The oath being the final step, no evidence is heard at that time. It comes after the matters in issue have been resolved in favor of the applicant for citizenship. Hence no opportunity exists for the examiner or the judge to determine if what the new citizen swore was true was in fact false. Hence, the issue of fraud in the oath cannot become *res judicata* in the decree sought to be set aside. For fraud in the oath was not in issue in the proceedings and neither was adjudicated nor could have been adjudicated.”

“Moreover, when an alien takes the oath with reservations or does not in good faith forswear loyalty and allegiance to the old country, the decree of naturalization is obtained by deceit. The proceeding itself is then founded on fraud. A fraud is perpetuated on the naturalization court.”

And, on page 674 of the same opinion, the Court said:

“We adhere to the prior rulings of this Court that Congress may provide for the cancellation of certificates of naturalization on the ground of fraud in their procurement and thus protect the courts and the nation against practices of aliens who by deceitful methods obtain the cherished status of citizenship here, the better to serve a foreign master.”

Recently, in the case of

Klapptropp v. United States (decided by the Supreme Court on January 17, 1949), reported in 93 S.Ct. Law. Ed. Advance Opinion 279,

the Court reiterated its statement in the *Scheiderman* and *Baumgartner* cases, that "clear, unequivocal and convincing" evidence was necessary to deprive a naturalized citizen of his citizenship.

It seems clear from the decision of the Supreme Court that mere membership in an organization, such as the Bund, per se is not sufficient cause for the cancellation of a certificate of citizenship.

Schneidermann v. United States, supra;

Baumgartner v. United States, supra;

Knauer v. United States, supra;

Klapptropp v. United States, supra.

The Court defined what is meant by "clear, unequivocal and convincing" evidence of fraud. In so doing it provided a yardstick of measure as to when "clear, unequivocal and convincing" evidence of fraud has been established in a denaturalization case. For this reason these facts in the *Knauer* case have been heretofore set forth at length.

Appellant takes no exception in his brief to Findings of Fact by the lower court from No. I to No. XI, inclusive, which facts are fully supported by the evidence as shown in our factual statement of the case.

As to Findings of Fact No. XII (R. 32), the Court found in substance, that sworn oaths of appellant, in

his petition for naturalization and in his oath of allegiance at the date of naturalization, as set forth in the complaint, were then and there false, fraudulent and illegal in that the appellant, at the time of taking said oaths, did not, in fact, absolutely and entirely renounce and abjure all allegiance and fidelity to Germany and the German Reich (R. 32) but in fact intended to and did secretly reserve and retain allegiance and fidelity to Germany and the German Reich; nor did appellant at the time he took said oaths intend to support the Constitution and laws of the United States of America against all enemies, foreign and domestic, but in fact, said appellant then and there secretly reserved his intention not to support and defend the Constitution and laws of the United States of America against Germany and the German Reich should they become enemies of the United States of America; nor did the appellant at the time of taking said oaths intend to bear true faith and allegiance to the United States of America, but in fact, secretly reserved and retained his intention not to bear true faith and allegiance to the United States of America; that by taking said oaths falsely, with the secret mental reservation and intention, as aforesaid, the appellant deceived the United States, its officers and agents, and the said naturalization court at the date of his admission to citizenship in order that said appellant might obtain the rights, privileges and protection of citizenship in the United States of America.

As to Findings of Fact No. XIII (R. 33) the Court found, in substance, that prior to, at the time of, and at all times subsequent to his naturalization, the appellant was acquainted with, sympathized and agreed with the aims, purposes and doctrines of the German-American Bund.

As to Findings of Fact No. XIV (R. 33) the Court found, in substance, that on the date of appellant's petition for naturalization, and at all times subsequently, the appellant's allegiance has been to Germany rather than to the United States, and his attachment has been to National Socialism rather than to the principles of the United States Constitution. His lack of allegiance to the United States and his lack of attachment to the principles of the Constitution had not changed or varied in the interval since his naturalization, and his attitude in these respects was the same when he was naturalized as in subsequent years up to the date of the trial.

It is submitted that upon consideration of the entire record in this case, which has been set forth heretofore in detail, and upon consideration of Findings of Fact Nos. I to XI, inclusive, as made by the Court, Findings of Fact Nos. XII, XIII, and XIV, are fully justified by the record herein and are the only findings of fact which the Court could properly make on these points.

As the evidence, in the opinion of the appellee, is sufficient to justify all the findings of fact made by the Court below, it necessarily follows that the Con-

clusions of Law made by the Court (R. 34) were correct.

As it appears that there was ample evidence presented to the Court to sustain the Findings of Fact and Conclusions of Law and that the facts in this case are somewhat analogous to those in the case of *Knauer v. United States*, supra, it is respectfully urged that the decision of the Court below should be affirmed.

Dated, San Francisco, California,
April 1, 1949.

FRANK J. HENNESSY,
United States Attorney,
EDGAR R. BONSALE,
Assistant United States Attorney,
Attorneys for Appellee.

(Appendix Follows.)

Appendix

In Section 4, Act of June 29, 1906 (34 Stat. 598) it is provided:

“It shall be made to appear to the satisfaction of the Court admitting any alien to citizenship that immediately preceding the date of his application, he has resided continuously within the United States 5 years at least, and within the state or territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence and occupation of each witness shall be set forth in the record.”

Section 338(a) of the Nationality Act of 1940 (Title 8 U.S.C.A. 738) provides:

“It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground

that such order and certificate of naturalization were illegally procured.

FINDINGS AND CONCLUSIONS AS TO THE COMMON ISSUE (MENTIONED IN APPELLANT'S BRIEF STATEMENT OF THE CASE, p. 4).

I.

In or about October, 1924, there was organized in Chicago, Illinois, the "Free Society of Teutonia" which, by subsequent changes of name, became known in 1926 as the "National Socialist Society of Teutonia", in 1932 as the "Friends of the Hitler Movement", in June, 1933 as the "Bund Freunde des Neuen Deutschland" or the "Bund Friends of the New Germany", and in March, 1936 as the "Amerika-Deutscher Volksbund" or "German-American Bund". The term "the Bund" is used to designate the organization at all times from and after June 30, 1933.)

II.

On or about June, 1933, local units of the National Socialist German Workers Party (commonly known as the "Nazi Party" or the "N. S. D. A. P.") then and theretofore existing in the United States ostensibly dissolved and associated themselves with and became amalgamated in the Bund.

III.

The Bund was active openly in the United States and operated until about the date of the declaration of war on December 8, 1941.

IV.

The Bund was an incorporated membership association in which membership was limited by the rules of the organization to persons of "Aryan" descent (as defined by the Nazi Party), free from Negro or Jewish blood. The membership was made up almost entirely of persons of German descent.

V.

The Bund, and each of the organizations mentioned in Paragraphs I and II hereinabove, was organized and conducted for German National Socialistic purposes, and was connected with and controlled in thought and action by the Nazi Party in Germany. In its organization and in its activities the Bund modeled itself upon and imitated the Nazi Party.

VI.

The constitution of the Bund as adopted in or about 1935, and as from time to time revised and published was false and misleading and designed to blind the American public to the true aims and purposes of the organization, which was dedicated to the accomplishment of the aims and purposes in the United States of German National Socialism, as expounded by Adolph Hitler and the Nazi Party.

VII.

The Bund stood for and taught the proposition that all people of German extraction were members of the German "Volk"; that no member of the "Volk" could ever be absorbed in or by any other nationality

or race; and that every member of the "Volk", regardless of what citizenship he might have acquired or derived in any other country, owed allegiance to Germany. That proposition is basic in the philosophy of the Nazi Party.

VIII.

The Bund stood for and taught that the German "Volk" was supreme over all other nationalities or races. That proposition is basic in the philosophy of the Nazi Party.

IX.

The Bund was conducted in accordance with the so-called "leadership principle", under which unquestioned obedience is owed to the leader. The leadership principle is a basic tenet of German National Socialism and is entirely inconsistent and at odds with the democratic concept of government. The Bund taught that under the leadership principle all persons of German extraction, as members of the German "Volk", owed obedience to the leader of the German nation who, from and after January, 1933, was Adolf Hitler.

X.

The Bund sought to instill and foster in United States citizens of German extraction a loyalty and allegiance to the "homeland" or "Vaterland"—Germany—thus to create in such citizenry a divided loyalty inconsistent with full and undivided allegiance to the United States owed by a citizen thereof.

XI.

The Bund taught that all people of "German" blood in the United States, regardless of their citizenship must serve the interests of Germany first, even though those interests might conflict with the interests of the United States.

XII.

The Bund attempted to create dissension among the people of the United States by urging discrimination against certain persons and groups of persons, for reasons of race, color or creed.

XIII.

At various times the Bund, or its predecessor, organizations named in Paragraph I hereinabove, published and distributed the following newspapers: "Das Neue Deutschland", "Deutsche Zeitung", "Deutscher Beobachter", "Deutscher Weckruf und Beobachter", and "Deutscher Weckruf und Beobachter and Free American". Each of such newspapers was the official organ of the organization at the time of its publication. Each of the newspapers was designed and used to disseminate the philosophy and precepts of German National Socialism in the United States, to foster in the readers thereof an allegiance to Germany and to the Nazi Party, and to incite in the readers thereof a contempt for democratic institutions and the government of the United States. The contents of such newspapers were Nazi-inspired, and in a large part the source material of the contents was secured by

the Bund or its predecessor organizations from propaganda agencies in Germany controlled by the Nazi Party.

XIV.

The Bund received Nazi propaganda material from such agencies as the Rassen Politische Auslands Korrespondentz (R. A. K.), Dienst Aus Deutschland, the Fichtebund, Volksbund fuer des Deutschtum im Ausland (V. D. A.), and Deutscher Auslands Institut (D. A. I.). Such material was disseminated by the Bund through the medium of newspapers (see Paragraph XIII, supra), and through books, pamphlets and leaflets distributed by Bund members at headquarters, Bund camps and elsewhere.

XV.

The Bund conducted a school at which officers and selected members were given special training in public speaking and in the methods and means of disseminating the principles of National Socialism. Such speakers were thereafter sent to Bund meetings and other gatherings to expound and advocate the philosophy of German National Socialism.

XVI.

The Bund sponsored and arranged speaking tours for members of the Nazi Party sent to the United States to address Bund meetings and other gatherings on the philosophy of German National Socialism.

XVII.

The Bund conducted camps at which Nazi flags and paraphernalia were exhibited; Nazi literature and propaganda were displayed, distributed and sold; speakers expounded the theories of German National Socialism; and at which both adults and youths were taught the principles of Nazi-ism and exhorted to be loyal to and preserve in their minds and lives the theories and philosophy of Germany over and above the theories and philosophies of the United States.

XVIII.

The Bund sought to and did instill in its members an allegiance to Germany and to the Nazi Party, and its leaders through the exhibition and use of such Nazi paraphernalia as the swastika, through the singing of such Nazi songs as the "Horst Wessel", and through the display and repetition of such slogans as "Ein Volk" (one people—the German people), "Ein Reich" (one country—Germany), "Ein Fuehrer" (one leader—Adolph Hitler).

XIX.

Within the Bund there existed a uniformed group known as the "Ordnungs Dienst". The "Ordnungs Dienst" was patterned after the Nazi Storm Troopers of Germany. It was a militant body of selected Bund members trained in military techniques and designed to serve as a nucleus for a future and larger military organization if and when the aims of the Bund were accomplished in the United States. It was used by

the Bund to spread the philosophies of the Bund and of German National Socialism, and to distribute literature and propaganda of German origin and thought.

XX.

The Bund organized and conducted a Youth Group ("Jungenschaft") which was modeled upon the Hitler Youth in Germany. Members of the Youth Group were taught the precepts of the Nazi philosophy; they were instructed in the German language to the exclusion of English; they were taught to keep **Germany**, German leaders, and German ideas foremost in their minds and to be loyal to them; they were taught to be German rather than American.

XXI.

From and after 1935 there was a group within the Bund known as the "Prospective Citizens League". Membership in said league was made up of German nationals who had filed declarations of intention to become citizens of the United States, but whose citizenship had not been completed. This division of the Bund was created for the purposes of organizing and keeping German nationals within the Bund, in order to prevent assimilation of such German nationals in American life, and to foster in such German nationals an adherence to the Nazi cause and to German National Socialism as represented by the Bund in this country. Members of the Prospective Citizens League were, in fact, members of the Bund, engaged in all activities of the Bund, and enjoyed all the rights and privileges pertaining to membership in the Bund.

There was no distinction between a Bund "member" and a member of the Prospective Citizens League.

XXII.

There was within the Bund a group known as "Forderers" or "Sympathizers". That designation was devised to conceal the affiliations of certain persons within the Bund. "Forderers" or "Sympathizers" were, in fact, members of the Bund, engaged in all the activities of the Bund, and in Bund membership. There was no distinction between a "Forderer" or "Sympathizer" and a Bund "member".

XXIII.

Throughout the life of the Friends of the New Germany and the German-American Bund, these organizations maintained a thorough program for acquainting and indoctrinating its members with the National Socialism doctrines and objectives for which it stood. This took the form of the Bund newspaper to which members were urged to subscribe, Bund commands issued and read to the members, pamphlets and documents distributed among the members, speakers from Germany and others sent out by Bund headquarters, national and district conventions and regional meetings, celebration and observation of Hitler's birthday and other German holidays, instructions given by local leaders to the Bund membership, the order of procedure with the display of Nazi flags and banners, and the use of National Socialistic slogans.

The Bund's program and doctrines were irreconcilable with allegiance to the United States and with the principles of the United States Constitution. Persons acquainted with the Bund's program and doctrines and who continued to participate in the Bund were acting in a manner inconsistent with attachment to the principles of the United States Constitution and with loyalty to the United States.

Consequently, a strong presumption arises that the officers and members who were active participants in the Bund's program over a considerable period of time could not escape having knowledge of the Bund's National Socialistic program and its connection with and control by the Nazi Party and the German Government.

XXIV.

The aims and purposes of the Bund, as promulgated and carried out by the San Francisco, Oakland, and Concord units, were identical with the aims and purposes of the national organization. Among other things, these units endeavored to create sympathy amongst the people of German extraction for the New Germany and to counteract the Jewish boycott on German-made goods.

XXV.

Bund commands were received from national headquarters by these local units and read to the members. These commands instructed the units concerning the best manner by which the membership could be of

assistance to Germany, advised the units in all matters relative to National Socialism, and directed the units in the conduct of their affairs.

XXVI.

These local units of the Bund and of the Friends of the New Germany held membership meetings and social meetings. The membership meetings were for members only. Meetings of the units closed by singing the "Horst Wessel" song. The Nazi salute was the official salute of the units. Their official flag was the swastika. They also used the American flag. Contributions were solicited from the members for the "Fighting Fund" to defray legal expenses of Fritz Kuhn's trial in New York City. Members contributed to the German Winter Relief. Dues were paid and a part of same was sent to Bund headquarters in New York. Some members received both the 1937 and 1938 editions of the Bund Year Book. Members were urged to purchase and subscribe to the Bund newspaper, and many did so.

XXVII.

National Bund officials and prominent Nazis delivered speeches to the local units. Some of the speakers were Fritz Kuhn, Wilhelm Kunze and Herman Schwinn, West Coast Leader. These speeches concerned the New Germany, conditions therein, and the functions of the Bund in its relation to that country.

XXVIII.

Not only did these units at their membership meetings advocate the principles of National Socialism, but even at their social meetings they grasped the opportunity further to instruct their members along these lines. At these social evenings motion pictures depicted the progress of the New Germany under Hitler, and travelogues were shown. At such meetings propaganda literature, some of which was printed in Germany, was available for distribution and sale. Speeches by Hitler, Goebbels, and other prominent Nazi officials, as well as the Bund newspaper, were on sale.

XXIX.

The local units had a uniformed group, the Ordnungs Dienst, or the O.D. Their uniforms consisted of a cap, white shirt (at one time a gray shirt), black tie, Sam Browne belt, breeches, and a white and red arm band with the swastika insignia thereon. The O.D. acted as a color guard and displayed both the American flag and the Bund flag which bore the swastika emblem. The uniforms were similar to those worn by the Storm Troopers in Germany, and the purpose of the O.D. was principally to protect members from attack during meetings, to act as ushers, and to distribute German pamphlets and literature.

XXX.

The local units sent representatives to the various district and national Bund conventions. In Germany

the Bund in 1936 paraded in uniform through the streets of Berlin and to the Reich Chancellory. This group presented a "Golden Book" to Hitler, in which were inscribed the names of the individuals who contributed a sum of money which was also presented to Hitler at that time. Some members of the local units contributed to this fund.

XXXI.

In carrying out the activities hereinabove described, and seeking to accomplish their real aims and purposes, the local units of the Bund demonstrated themselves to be militant Nazi organizations, antagonistic to the democratic form of government and to the Constitution and laws of the United States, and that they were un-American and subversive.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court draws the following Conclusions of Law:

I.

In carrying out the activities hereinabove described, and in seeking to accomplish its real aims and purposes, the Bund demonstrated itself to be a German Militant "Fifth Column" organization in the United States, antagonistic to the democratic form of government and to the Constitution and laws of the United States un-American and subversive. One who believes in the National Socialist philosophy and form of government cannot at the same time be loyal to

the United States nor attached to the principles of the Constitution and laws of the United States.

II.

The principles of German National Socialism are opposed in all respects to the principles of democracy and to the Constitution and laws of the United States.

FINDINGS OF FACTS AS TO PAUL FIX

(Tr. p. 27)

I.

That the defendant Paul Fix at the time of filing of the complaint herein was a resident of the Town of Lafayette, County of Contra Costa, and within the jurisdiction of this Court.

II.

That the defendant was born in Haslach, Germany, on January 26, 1904; came to the United States in December, 1928; filed his Declaration of Intention to become a citizen of the United States on June 29, 1929; and thereafter filed his petition for citizenship in the Southern Division of the United States District Court for the Northern District of California on September 23, 1933. That thereafter he was examined, together with two witnesses to said petition, by the United States Naturalization Examiner in San Francisco, California, on said petition. Thereafter, by an order of said District Court, de-

defendant was admitted to become a citizen of the United States on January 6, 1936, at the conclusion of an open hearing in said Court on said petition, upon the favorable recommendation of the said United States Naturalization Examiner; that thereupon defendant took the oath of allegiance to the United States, and, by virtue of said order of said Court, Certificate of Naturalization No. 4047905 was issued to defendant, who now claims citizenship thereunder.

III.

That the defendant joined the German-American Bund late in the year 1938 or in the early part of 1939, paid dues for approximately three months, and subsequently received a membership card. Defendant never became an officer of the Bund, nor a member of the Ordnungsdienst. Defendant remained a member of the Bund until about September, 1939.

IV.

From 1934 to 1937, defendant, while not a member during these years, did attend various meetings and gatherings of the Friends of the New Germany and the German-American Bund. In April 1937 defendant returned to Germany with his wife for approximately four months. From the latter part of 1937 until the latter part of 1939 he attended numerous affairs of the German-American Bund where he heard many lectures on the merits of National Socialism and at which meetings and gatherings the

German swastika flag was displayed, the Nazi salute with the outstretched right arm was given, and the "Horst Wessel" was sung; also during these years defendant read "Weckruf und Beobachter", the official newspaper of the German-American Bund, which was distributed, at meetings. In 1938 defendant attended the German-American Bund picnic at Dublin Canyon, upon the occasion of the burning of a large swastika upon the hillside.

In September 1939 defendant drove his car, at his own expense, to Los Angeles, California, and attended the Gautag West (Western District Convention), although not a delegate nor an officer of the Bund. Defendant took with him other Bund members, and in attendance at said convention was Gottfried Karl Hein, leader of the San Francisco and Oakland units. Upon this occasion a group telegram was sent by Bund members to senators and congressmen in Washington, urging that the United States remain neutral in the European conflict. Defendant subscribed to this telegram and received a reply directed to him at Bund headquarters, Los Angeles, California, from Senator Hiram W. Johnson.

V.

Defendant made the following statements to Witness McClure:

Shortly after Pearl Harbor was bombed by the Japs, defendant said it served this country right, and referred to the president and the cabinet as

war-mongers. Later, in connection with the purchase of war bonds, he said he did not want any, that he wanted other things more, that they would be no good after the war, and that Germany would win the war. He said the gold in Fort Knox would be melted into German marks. In referring to the salvage program of this Government, defendant said he would not give the S. B.'s anything. When told on one occasion that he would have to turn in any empty tube when he purchased a new tube of shaving cream, he said he would take the cream in a jar and would not give them a dam thing. Several times defendant referred to Jews as S. B.'s and bastards, and was heard to say that the United States should have the National Socialist form of government.

VI.

In January, 1943, in discussing with the California State Humane Officer an incident of the shooting of a dog allegedly shot by defendant, the defendant stated that Hitler would take over this country and would then take care of the State Humane Officer.

VII.

In April, 1940, defendant moved to a room at 101 Steiner Street in San Francisco, where he lived for approximately three months. On one occasion during this period of time, defendant was talking to his landlady and her daughter about Germany.

He said that all unions in this country should be broken like they were in Germany, that Hitler had seen to it that all unions were broken in Germany, that the Germans here were planning to take over America, that they were planning to rise when Hitler told them to, that they were all armed and prepared, and that they were also prepared to take over South America as well as North America. Defendant said there was a retired United States Army general by the name of Moseley whom the Nazis had picked as their leader in America, and defendant stated that all the Jews would have to go—that they would have to be wiped out. Defendant referred to the Jewish people in Germany as being wiped out, and said that President Roosevelt was a Jew.

VIII.

Also during the time defendant was living at 101 Steiner Street he received invitations through the mail to German-American Bund meetings, and he received copies of "Weckruf und Beobachter". He kept various German and other phonograph records in his room, at least one of which concluded with the words "Heil Hitler".

IX.

In 1941, after war was declared between the United States and Germany, defendant stated that if the president had kept his mouth shut the United States would not have been in the war.

X.

After defendant returned from his trip to Germany in 1937, he said Hitler was doing a fine job for the people there and that we may need a Hitler here to change our conditions. Defendant also stated that he did not want any Jewish salesmen calling on him at his place of business, which had been that of operating and conducting a bakery in various locations over a period of years.

XI.

Defendant made a small contribution of twenty-five cents for German winter relief when he was in Germany in 1937, and contributed one dollar to such here in San Francisco.

XII.

That the sworn oaths and statements of the defendant in his Petition for Naturalization and in his oath of allegiance at the date of naturalization, as set forth in the complaint, were then and there false, fraudulent, and illegal in that the defendant, at the time of taking said oaths, did not in fact absolutely and entirely renounce and abjure all allegiance and fidelity to Germany and the German Reich, but in fact intended to and did secretly reserve and retain allegiance and fidelity to Germany and the German Reich; nor did the defendant then and there intend to support and defend the Constitution and laws of the United States of America against all

enemies, foreign and domestic, but in fact the said defendant then and there secretly reserved his intention not to support and defend the Constitution and laws of the United States of America against Germany and the German Reich should they become enemies of the United States of America; nor did the defendant at the time of taking said oaths intend to bear true faith and allegiance to the United States of America, but in fact secretly reserved and retained his intention not to bear true faith and allegiance to the United States of America. That by taking said oaths falsely, with the secret mental reservations and intentions as aforesaid, the defendant deceived the United States, its officers and agents, and the said Naturalization Court at the date of admission to citizenship in order that said defendant might obtain the rights, privileges and protection of citizenship in the United States of America.

XIII.

That prior to, at the time of, and at all times subsequent to his naturalization, the defendant was acquainted with, sympathized, and agreed with the aims, purposes, and doctrines of the German-American Bund.

XIV.

That on the date of the defendant's petition for naturalization, at the time of his naturalization, and at all times subsequently, the defendant's allegiance has been to Germany rather than to the United

States, and his attachment has been to National Socialism rather than to the principles of the United States Constitution. His lack of allegiance to the United States and his lack of attachment to the principles of the Constitution have not changed or varied in the interval since his naturalization, and his attitude in these respects was the same when he was naturalized as in subsequent years up to the date of the trial.

XV.

The Findings of Fact with respect to the consolidated common issue hereinabove set forth are incorporated herein and made a part hereof by reference.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact the Court concludes as matters of law:

I.

That this Court has jurisdiction to hear and determine the issues in this action.

II.

That the Certificate of Naturalization, granted as aforesaid, was illegally and fraudulently procured by the said defendant, and should be revoked, set aside and canceled.

III.

The Conclusions of Law with respect to the consolidated common issue hereinabove set forth are

incorporated herein and made a part hereof by reference.

(The preceding Findings of Fact and Conclusions of Law as to Paul Fix, Case No. 22577-G, are from Findings of Fact and Conclusions of Law, filed March 31, 1944, in Case No. 22411-G, United States of America v. Johannes Frederick Bechtel.)

(Endorsed): Filed March 31, 1944.